
IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, NORTHERN DIVISION

PARKER MALMSTROM and CRYSTAL
MALMSTROM,

Plaintiffs,

v.

STATE OF UTAH DEPARTMENT OF
CHILDREN AND FAMILIES, et al.,

Defendants.

**MEMORANDUM DECISION AND
ORDER ADOPTING [103] REPORT
AND RECOMMENDATION**

Case No. 1:17-cv-80-DN-EJF

District Judge David Nuffer

Magistrate Judge Evelyn J. Furse

The Report and Recommendation¹ issued by United States Magistrate Judge Evelyn J. Furse on January 11, 2018 recommends² that all of Plaintiff Parker Malmstrom's claims³ against the State of Utah and the Utah Department of Child and Family Services be dismissed without prejudice for failure to state a claim, or because of their Eleventh Amendment Immunity or because neither constitutes a "person" subject to suit under [42 U.S.C. § 1983](#).⁴

The parties were notified of their right to file objections to the Report and Recommendation within 14 days of its service pursuant to [28 U.S.C. § 636](#) and [Fed. R. Civ. P.](#)

¹ Report and Recommendation: State of Utah and Utah Department of Child and Family Services Motion to Dismiss (ECF No. 49), [docket no. 103](#), filed January 11, 2017.

² *Id.* at 6.

³ Pro se Plaintiff Parker Malmstrom filed his Complaint on May 16, 2017. *See* Complaint, [docket no. 1](#), filed May 17, 2017. He then filed an Amended Complaint on May 16, 2017. *See* Amended Complaint, [docket no. 3](#), filed May 23, 2017. The Amended Complaint joined his mother, Crystal Malmstrom, as a Plaintiff. *See Id.* At Oral Argument, Crystal Malmstrom clarified that she is only bringing claims against Defendant Jacob Smith. *See* Minute Order, Proceedings held before Magistrate Judge Evelyn J. Furse: Motion Hearing, docket no. 88, filed September 12, 2017. Because of this clarification, the Report and Recommendation only address Parker Malmstrom's claims against the State of Utah and the Utah Department of Child and Family Services.

⁴ *See* Motion to Dismiss, [docket no. 49](#), filed June 26, 2017.

72.⁵ As Plaintiffs were mailed a copy of the Report and Recommendation, they were provided an additional three days to file their objection under [Fed. R. Civ. P. 6\(d\)](#). Because the last day of the 17 day period to file an objection would have been Sunday, January 28, 2018, the objection period was extended one day until the end of Monday, January 29, 2018 under [Fed. R. Civ. P. 6\(a\)\(1\)\(C\)](#).

On January 30, 2018, Plaintiffs filed a document entitled “Objection to Magistrate’s Decision and Order Or Motion to Set Aside Magistrate’s [sic].”⁶ The document does not specify which Report and Recommendation is the subject of the objection and its content does not appear to relate to this Report and Recommendation. In addition to the lack of specificity, the filing⁷ is untimely as to this Report and Recommendation. Because no party filed a timely written objection to the Report and Recommendation as provided by court rules,⁸ and because the analysis and conclusion of the Magistrate Judge are sound, the Report and Recommendation⁹ is adopted in its entirety.

⁵ See Report and Recommendation at 6.

⁶ [Docket no. 107](#), filed January 30, 2018.

⁷ *Id.*

⁸ See [28 U.S.C. § 636](#) and [Fed. R. Civ. P. 72](#)

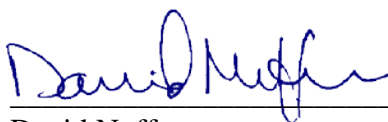
⁹ Report and Recommendation: State of Utah and Utah Department of Child and Family Services Motion to Dismiss (ECF No. 49), [docket no. 103](#), filed January 11, 2017.

ORDER

IT IS HEREBY ORDERED that the Report and Recommendation¹⁰ is ADOPTED and the Motion to Dismiss¹¹ filed by Defendants the State of Utah and the Utah Department of Child and Family Services is GRANTED. Plaintiff Parker Malmstrom's claims against the State of Utah and the Utah Department of Child and Family Services are dismissed without prejudice.

Signed February 7, 2018.

BY THE COURT



David Nuffer
United States District Judge

¹⁰ Report and Recommendation: State of Utah and Utah Department of Child and Family Services Motion to Dismiss (ECF No. 49), [docket no. 103](#), filed January 11, 2017.

¹¹ Motion to Dismiss, [docket no. 49](#), filed June 26, 2017.